

# **HOUSE BILL 22, 2005, Sections 1 - 9 DETAILED**

## **AS AMENDED BY HB 473 IN 2007**

*This bill has been codified in Sections 15-1-216, 85-2-231, 85-2-237, 85-2-270 through 273, 85-2-276, and 85-2-279 through 283 of the 2005 Montana Codes Annotated [MCA]. See these code sections for exact HB 22 amendments. HB 22 can be found in its entirety as enacted by typing in “HB 22” at:*

*[http://laws.leg.state.mt.us/pls/laws05/law0203w\\$.startup](http://laws.leg.state.mt.us/pls/laws05/law0203w$.startup)*

*Portions of this bill concerning the adjudication fee were REPEALED or STRICKEN in 2007 by House Bill 473, and are so noted below. HB 473 can be found in its entirety as enacted at: <http://data.opi.mt.gov/bills/2007/billpdf/HB0473.pdf>*

The wording of this Bill is set out below in this style of print.

***DNRC comments on various sections are shown in bold italic print. All initial bracketing, underlining and bold type in the wording of the bill has been added strictly for emphasis.***

**Section 1. Findings -- purpose.** [codified as Section 85-2-270 MCA, 2005] (1) The purpose of [sections 1 through 10] is to generate revenue to adequately fund Montana's water adjudication program to:

(a) complete claims examination and the initial decree phase;

***(DNRC: When this bill was drafted, there were 57,000 statements of claim that had not yet been examined by DNRC and had not yet been decreed by the Montana Water Court. The statement “to generate revenue to adequately fund Montana’s water adjudication program” was STRICKEN in 2007 by HB 473.)***

(b) reexamine claims in basins that were verified and were not subject to the supreme court examination rules when the water court has received a petition and issued an order pursuant to [section 9] or the water court has issued an order on its own initiative; and

***(DNRC: 43 basins were examined under older and different guidelines, called “verification.” Claimants in these 43 basins may request to have their claims***

***reexamined under the current Supreme Court Rules. If the Water Court approves such a request, DNRC will be required to reexamine the claims.)***

(c) ensure that the product of the adjudication is enforceable decrees.

***(DNRC: More and more water users are requesting District Court enforcement of their water rights. If such a request is granted by a District Court, the District Court appoints a water commissioner to distribute the source of water in the request. See Mont. Code Ann. Section 85-5-101.***

***Water users can ask for enforcement of old District Court decrees, or of Water Court decrees if they have been issued, or between individual water right holders upon certification from the District Court to the Water Court. See Mont. Code Ann. Section 85-2-406.***

***The 57,000 statements of claim that have not been examined or decreed by the Water Court cannot be enforced under a Water Court decree until they have been examined, decreed, and any objections resolved.)***

(2) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins for which the water court has received a petition and issued an order pursuant to [section 9] or the water court has issued an order on its own initiative by June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020, for all basins in Montana.

***(DNRC: The Environmental Quality Council (EQC), which drafted HB 22, worked with the DNRC and the Water Court to determine a realistic timetable for completion of the adjudication of the remaining 57,000 statements of claim. They came up with 10 years to complete claims examination and another 5 years thereafter to complete the issuance of initial decrees for these 57,000 claims. The EQC determined what resources would be needed to meet this timetable, and the overall additional costs beyond the normal yearly budgets for both DNRC and the Water Court. Next, the EQC determined that the resources to meet this timetable could be acquired and sustained if a nominal adjudication fee was assessed to all water users over the next***

**10 years. This nominal adjudication fee was REPEALED in 2007 by HB 473 after only one billing cycle in December 2005.)**

(3) It is essential to preserve the trust that the water users of Montana have placed in the legislature by ensuring that the revenue generated by the water adjudication fee established in [section 5] is used only for the purpose of adjudicating Montana's water rights.

***(DNRC: The fees collected go into a special adjudication fee account and will ONLY be used for the expenses of completing the examination of claims and issuing decrees for the 57,000 remaining statements of claims and any court ordered reexaminations. This subsection was REPEALED in 2007 by HB 473. )***

**Section 2. Benchmarks -- action taken if not met. [codified as Section 85-2-271 MCA, 2005]** (1) The completion of initial claims examination is of a higher priority than reexamination of claims that were subject to the verification process unless the chief water judge issues an order making reexamination a higher priority, as provided in subsection (3)(b).

***(DNRC: Reexamination will slow down the process of completing the examination of the 57,000 remaining statements of claim. Therefore, examining the 57,000 remaining claims will be the number one priority unless the Water Court determines otherwise.)***

(2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must be examined. There are approximately 98,000 claims that were verified that may be reexamined using the supreme court examination rules if the water court receives a petition and issues an order as provided in [section 9] or the water court issues an order on its own initiative.

***(DNRC: This allows the Water Court to order reexamination of previously verified basins that were not as rigorously examined as subsequent basins.)***

(3) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination by the department.

***(DNRC: The Water Court decides the order of examination for the 57,000 remaining statements of claim, and also the need and order for any reexamination.)***

(b) The chief water judge has the authority to order that reexamination be completed for a certain basin in a higher priority than claims examination. If the chief water judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.

(4) (a) The cumulative benchmarks that are provided in subsection (4)(b) must be met. If the benchmarks are not met, the fee contained in [section 5] that is attached to a water right for the purpose of funding the adjudication may not be assessed the following even-numbered year. All claims must be examined by June 30, 2015.

(b) The cumulative benchmarks are as follows:

<u>Date</u>	<u>Total Number of Claims Examined</u>
December 31, 2006	8,000; <b><i>(DNRC-8,000 claims examinations were completed by 12/31/06)</i></b>
December 31, 2008	19,000; <b><i>(DNRC-11,000 more claims must be completely examined by 12/31/08.)</i></b>
December 31, 2010	31,000; <b><i>(DNRC-12,000 more claims must be completely examined by 12/31/10.)</i></b>
December 31, 2012	44,000; <b><i>(DNRC-13,000 more claims must be completely examined by 12/31/12.)</i></b>
June 30, 2015	57,000 <b><i>(DNRC-The remaining un-examined claims must be completely examined by 6/30/15.)</i></b>

*(DNRC: The following portion of (4)(b) above was REPEALED in 2007 by HB 473: "the fee contained in [section 5] that is attached to a water right for the purpose of funding the adjudication may not be assessed the following even-numbered year."*

**Section 3. Definitions. [Codified as Section 85-2-272 MCA, 2005]** For the purposes of [sections 1 through 10], the following definitions apply:

(1) "Calculated volume" means the feasible volume given the flow rate and period of use.

***(DNRC: The 2005 fee for some water rights was based upon volume. See Section 5.(4) and (5) below. Volume is defined as the number of acre-feet of water used in a calendar year [AF/YR]. The stated volume on a water right was used where volume is stated. Where there is no stated volume in a category requiring a fee based on volume, the volume was calculated to determine the fee. The formula used to calculate volume is as follows:***

***Stated flow rate x number of days in stated period of use = Acre Feet Per Year***

***EXAMPLES: 200 GPM x 365 days = 322.6 AF/YR (1 AF = 325,851 gallons)***

***10 CFS x 180 days = 3570.0 AF/YR (1 CFS=448.8 GPM)***

(2) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

***(DNRC: Person is also used in HB 22 to refer to "owner". Person or owner is the entity listed in the DNRC records as the owner of the water right.)***

(3) "Water right" means a legal right to the beneficial use of water as recorded in the centralized water recording system by a water court decree, provisional permit, ground water certificate, filed exempt right, Powder River declaration, statement of claim, stockwater permit, temporary provisional permit, or 1962 to 1973 ground water filings as recorded with the department or that portion of a water reservation that has been put to beneficial use. This definition applies only to the use of the term for the purposes of assessing the fee and [sections 1 through 10].

***(DNRC: This means all types of water rights found in the DNRC records. This Section was REPEALED in 2007 by HB 473.)***

**Section 4. Owner.** [Codified as Section 85-2-273 MCA, 2005] (1) For the purposes of giving notice or imposing a fee, as provided for in [section 5], "owner", as used in [sections 5 and 6] and this section, means the first enumerated entity on a water right.

***(DNRC: In the case of a water right that has multiple owners, the adjudication fee bill and other notices were only sent to the first listed owner on the water right. For example, where a water right is owned by several family members, only one member***

***in the family was sent a bill. If one subdivision member got a bill, other subdivision members listed on the ownership records would not receive a bill.)***

(2) The owner is responsible for collecting the proportionate share of any fee from the other entities enumerated on the water right.

***(DNRC: If multiple owners are listed on the water right, the owner who received the bill is responsible for paying the bill and for collecting the co-owners' share of the bill. This Section was REPEALED in 2007 by HB 473. However, the following language appears in Section 8 of HB 473:***

***“Section 8. Collection of outstanding water adjudication fees – appeals. [This act] does not affect the department’s ability to address appeals filed pursuant to former 85-2-276 or the collection of fees from a water right owner who did not pay the water adjudication fee provided for in former 85-2-276 as of [the effective date of this act]. The department of natural resources and conservation shall turn over any debt to the department of revenue for collection pursuant to Title 17, chapter 4. If efforts to collect the debt are not successful, the department of revenue may file a lien against the water right in the county where the water is put to beneficial use after notifying each entity enumerated on the water right.”)***

**Section 5. Water adjudication fees -- exceptions.** [Codified as Section 85-2-276 MCA, 2005] (1) (a) Except as provided in subsection (1)(c), a water adjudication fee is authorized and directed to be imposed by the department of revenue on all water rights. ***(DNRC: This section imposed the fee. It imposed the fee on ALL water right types, including statements of claim, permits, certificates of water right, and water reservations in use were billed the adjudication fee. However, federal and tribal water rights cannot be billed for the adjudication fee based on subsection (c) below. This Section was REPEALED in 2007 by HB 473. However, HB 473 specifies that all 2005 adjudication fees already billed will be collected.)***

(b) Except as provided in [section 2], [section 7], and subsections (1)(c) and (10) of this section, an owner shall pay a biennial fee for the purpose of funding Montana's water adjudication based on the fees established in subsections (4) through (7) of this section.

***(DNRC: The owner of the water right was billed for the adjudication fee in December 2005. The adjudication fee was based on the fee schedule shown in subsections (4) through (7) below.)***

(c) The water adjudication fee may not be imposed on federal water rights and tribal reserved and aboriginal claims to water.

(2) The water adjudication fee is due on January 31 of even-numbered years. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

***(DNRC: The bills for the adjudication fee were sent by the Department of Revenue to water right owners in mid December of 2005. Payment on the 2005 bills were to be paid to the Department of Revenue and due January 31 of 2006. Mont. Code Ann. § 15-1-216 allows that for non-payment of fee a lien can be placed on the water right. Contact the Department of Revenue or an attorney for further information on the application of this statute.)***

(3) (a) Subject to subsection (3)(b), the department of revenue may withhold revenue equal to the actual cost of collecting the water adjudication fee.

(b) The department of revenue may not withhold more than 5% of the revenue generated.

***(DNRC: The Department of Revenue may withhold up to 5% of the adjudication fees received for their administrative costs in fee collection. Contact the Department of Revenue or an attorney for further information on the application of this statute.)***

(4) (a) An owner for the purposes described in subsections (4)(b) through (4)(f) shall pay according to a graduated scale. The number of water rights for which a fee must be paid on a per purpose basis is capped at 20 water rights a person for each graduated level.

***(DNRC: The fee was set according to 3 different volume amounts for each purpose (use) described in the categories below. An owner who has more than one water right in each volume category was billed for each right up to 20 rights. If an owner has more than 20 water rights in a specific volume category, the owner was only required to pay the adjudication fee for the first 20 water rights in that volume***

**category. Refer to the definitions for the terms “claimed” and “calculated”. This fee was discontinued in 2007.)**

- (b) For a **commercial** water right with a claimed or calculated volume that is:
  - (i) 0 acre feet to 100 acre feet, the fee is \$20;
  - (ii) greater than 100 acre feet and less than or equal to 5,000 acre feet, the fee is \$1,000; and
  - (iii) greater than 5,000 acre feet, the fee is \$2,000.
- (c) For an **industrial** water right with a claimed or calculated volume that is:
  - (i) 0 acre feet to 1,000 acre feet, the fee is \$20;
  - (ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and
  - (iii) greater than 4,000 acre feet, the fee is \$2,000.
- (d) For a **mining** water right with a claimed or calculated volume that is:
  - (i) 0 acre feet to 1,000 acre feet, the fee is \$20;
  - (ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and
  - (iii) greater than 4,000 acre feet, the fee is \$2,000.
- (e) For a **municipal** water right with a claimed or calculated volume that is:
  - (i) 0 acre feet to 1,000 acre feet, the fee is \$20;
  - (ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and
  - (iii) greater than 4,000 acre feet, the fee is \$2,000.
- (f) For a **power generation** water right, both consumptive and nonconsumptive, with a claimed or calculated volume that is:
  - (i) 0 acre feet to 100,000 acre feet, the fee is \$20;
  - (ii) greater than 100,000 acre feet and less than or equal to 1 million acre feet, the fee is \$1,000; and
  - (iii) greater than 1 million acre feet, the fee is \$2,000.



(5) Except for instream flow water rights used for irrigation purposes or for the purposes identified in subsection (4), an **instream flow** water right or an instream flow water reservation, with a claimed or calculated volume that is:

(a) 0 acre feet to 50,000 acre feet, the fee is \$20;

(b) greater than 50,000 acre feet and less than or equal to 1 million acre feet, the fee is \$1,000; and

(c) greater than 1 million acre feet, the fee is \$2,000.

***(DNRC: For these instream flow volume categories, each right was billed. There was no cap on the number of rights for any of these 3 volume categories. These categories do not include instream flow use for commercial, industrial, mining, municipal, power generation, or irrigation rights, which were billed under their specific categories as set out in Section 5(4)(a) through (f) above and (6) below. This fee was discontinued in 2007.)***

(6) The fee for an irrigation water right or irrigation claim that is part of an irrigation district, ditch company, canal company, irrigation project, water user's association, or other **organized group** with the purpose of allocating irrigation water is \$20 a user, with the fee capped at 40 users. The fee must be paid by the user. If an irrigation district, ditch company, or water user's association has more than 40 users, **the fee may not exceed \$800** and must be split equally among the users.

***(DNRC: For these multiple user type groups the adjudication fee was based upon the maximum number of users who are provided water under the group's water rights. The bill was sent to the group owner. The group owner is responsible for assessing the fee equally among the users and for payment of the fee to the Department of Revenue. The fee is \$20.00 per user up to 40 users, or a maximum of \$800.00. Users of water allocated by these groups were not billed twice if their names also appear as owners of these water rights. However, if a group water user also has water rights in his/her own name, the water user was also billed for his/her individual water rights. This fee was discontinued in 2007.)***

(7) The fee for all water rights that are not subject to subsections (4) through (6) is \$20. The fee is capped at 20 water rights a person for purposes that are not addressed in subsections (4) through (6).

***(DNRC: The fee for all OTHER water rights not covered above in Section 5(1) through (6) is \$20 per water right up to 20 water rights per owner. The fee per owner caps at 20 water rights or \$400. This fee was discontinued in 2007.)***

(8) The fees established in subsections (4) through (7) apply to all water rights on record with the department that are not withdrawn or terminated.

***(DNRC: Water rights that had a status of “active” in the DNRC records were billed for the adjudication fee. Water rights that had a status of something other than “active,” such as pending, withdrawn, terminated, denied, revoked, or dismissed, did not get a bill. This fee was discontinued in 2007.)***

(9) A person may file an administrative appeal with the department to contest the total amount of the fee assessed against the person or a fee imposed based on incorrect ownership records.

***(DNRC: An owner who believed that they were assessed an incorrect fee had a remedy. They could file an appeal with DNRC.***

***An owner who transferred or sold water rights should check with the local DNRC Regional Office to be sure an Ownership Update Form was filed with the DNRC. If the Ownership Update Form was not filed, people were billed for water rights they no longer own. The deadline for filing appeals of the 2005 adjudication fee bills was March 31, 2006. Appeals of the 2005 fee bills are no longer being accepted.***

***A person who purchased land or property that included water rights should check with the local DNRC Regional Office to be certain the water right ownership is accurate. It is important that the current owner of the water right receive notice of the adjudication fees to avoid liens or penalties on their water rights.)***

(10) Fees authorized in this section may not be assessed after June 30, 2014.

***(DNRC: Water users will only receive a total of 1 adjudication fee bill. They received this bill in 2005. No further billing is authorized and this bill was discontinued in 2007.)***

**Section 6. Debt collection.** [Codified as Section 85-2-279 MCA, 2005] If the owner of a water right does not pay the fee after receiving an initial bill statement and one reminder bill statement:

***(DNRC: Owners ONLY got two notices to pay their 2005 adjudication fee bills.)***

(1) the department shall turn over the debt to the department of revenue for collection pursuant to Title 17, chapter 4; and

***(DNRC: After the deadlines set in the initial bill and a reminder bill, the DNRC must notify the Department of Revenue of all owners who have not paid their 2005 adjudication fee bills. The Department of Revenue can collect the fees with the assistance of debt collection services as specified in Mont. Code Ann. Section 17-4-101 and following statutes. For further information on this subject contact the Department of Revenue or an attorney. This section has been REPEALED.)***

(2) if efforts to collect the debt are not successful, the department of revenue may file a lien against the water right in the county where the water is put to beneficial use after notifying each entity enumerated on the water right.

***(DNRC: If the 2005 adjudication fee is not paid, the Department of Revenue may file a lien. Liens generally affect the sale or transfer of property. For further information on the effects of liens contact an attorney or the Department of Revenue. This Section has been REPEALED.)***

**Section 7. Water adjudication account.** [Codified as Section 85-2-280 MCA, 2005]

(1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

***(DNRC: A separate, special account has been set up for all money (fees and general fund) allocated for the adjudication.)***

(2) (a) For the period beginning July 1, 2005, and ending June 30, 2015, there is allocated to the department and the water court up to \$2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication account for the sole purpose of funding the water adjudication program. These funds may not be used for the purpose of updating or maintaining a computer database.

***(DNRC: This section authorizes the budget for the DNRC and Water Court adjudication programs. Both DNRC and Water Court must go through the legislative appropriation process each biennium for these budget amounts. The fees may not be used for the DNRC database.)***

(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to \$1 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole purpose of funding the water adjudication program.]

(c) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.

***(DNRC: The general fund money can only be specifically allocated to DNRC and the Water Court by the legislature through the normal appropriation process during each legislative session. The 2007 legislature allocated \$25 Million to this fund in HB 473 when the adjudication fee was discontinued.)***

(3) (a) Subject to subsection (3)(b), the total amount of revenue deposited in the water adjudication account from the fee provided for in [section 5] may not exceed \$31 million.

(b) If federal funds are appropriated for the purposes of [sections 1 through 10], the maximum amount that may be deposited in the account must be reduced by the amount of federal funds appropriated.

(c) Once revenue generated from the fees provided for in [section 5] and any federal revenue appropriations have reached \$31 million, the fee may no longer be assessed.

***(DNRC: The DNRC can collect from water right owners and any federal contributions up to \$31 million dollars in adjudication fees. Water right owners will not be billed***

***the adjudication fee again after the 2005 billing cycle. The adjudication fee was discontinued in 2007.)***

(4) Interest and income earnings on the water adjudication account must be deposited in the account.

(5) Revenue remaining in the water adjudication account on June 30, 2020, must be transferred to the water right appropriation account provided for in 85-2-318.

***(DNRC: When the requirements of HB 22 are met in 2020, any remaining funds go into the current water right appropriation account.)***

**Section 8. Reporting requirements.** [Codified as Section 85-2-281 MCA, 2005]The department and the water court shall:

(1) provide reports to the environmental quality council at each meeting during a legislative interim on:

- (a) the progress of the adjudication; and
- (b) the total revenue generated by the fees established in [section 5] and deposited in the account provided for in [section 7];

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money, state special revenue funds, and the allocated fee revenue.

***(DNRC: Both the DNRC and the Water Court are accountable to the EQC [the legislative oversight committee] for their progress and expenditures to complete the adjudication of existing water rights as directed.)***

**Section 9. Examination of claims in verified basins.** [Codified as Section 85-2-282 MCA, 2005] (1) At any time prior to the issuance of a final decree, in basins that were evaluated using the verification process rather than the examination process, the owners of water rights in the basin or a specified area in the basin may petition the water court to examine claims in the basin or an area in the basin pursuant to the supreme court rules.

(2) The owners of at least 15% of the number of water rights affected by the proposed reexamination shall sign the petition.

(3) At a minimum, the petition must provide:

- (a) the specific water right purpose or water right purposes to be examined; and
- (b) the elements to be examined.

(4) (a) The water judge shall evaluate each petition and determine if reexamination is necessary to provide greater accuracy to the adjudication.

(b) The water judge may request public comment on the petition.

(5) If the water judge determines reexamination should be conducted, the water judge shall issue an order that provides:

- (a) what water right purpose or water right purposes must be examined by the department;
- (b) the elements to be examined;
- (c) final disposition of the reexamination information developed by the department; and
- (d) the timeframe in which the reexamination must be completed.

(6) The water court may issue an order requiring reexamination on its own initiative. The order must provide the information contained in subsection (5).

(7) Upon receipt of the reexamination information from the department, the water court shall notify the users in the basin or the specified area in the basin identified in the petition

of the final results of the reexamination and shall notify them regarding further steps or actions being taken as a result of the reexamination.

(8) Any actions taken as a result of the reexamination must be conducted in accordance with this part.

***(DNRC: This Section spells out the process that must be used to petition the Water Court to reexamine claims that were verified under the former verification process. For further information on this process contact the Water Court.)***